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THE ROLE OF THE PROBATE COURT

Conservatorship cases are assigned to a specialized department of the superior court in each county, called the **probate** department or the **probate court**.

In larger counties the probate court may consist of one or more separate departments, or courtrooms, that handle only probate cases. These include **guardianships** and **decedents' estates** in addition to conservatorships. In smaller counties, the judge in the probate department also hears other kinds of cases.

The probate court has the legal authority to make decisions about the life and property of a conservatee. When a judge appointed you conservator, the court's authority to care for your conservatee was partly delegated to you, under the court's supervision.

The court does not grant this authority lightly, and it will review your actions as conservator. Before you take certain steps as conservator, such as selling the conservatee's home, you must get a judge's approval. It is important that you check with your lawyer to find out when you will need the probate court's approval. **L**

The court is also responsible for resolving disputes that may arise between the conservator and other interested persons, including the conservatee. In this role, the court operates more like it does in other areas of the law, as an impartial decision maker. If there is a dispute, the court's procedures for resolving it are similar to the procedures used in a regular civil lawsuit.

However, although the court is fair, in disputes between the conservator and the conservatee its primary responsibility is to protect the conservatee. It discharges that responsibility by closely supervising the conservator.

1. Court Personnel and Their Responsibilities

In each county, a judge or **commissioner** is assigned to handle probate cases. Each probate court has a **court investigator**. In small counties, the judge, assisted by a clerk, may hear probate cases one morning a week. In larger counties, the probate court operates on a full-time basis and includes a number of departments and judges, and the judges have more staff to help them. The staff may include experienced probate lawyers who work for the court or probate examiners. These persons examine papers **filed** and advise the judge and the parties filing the papers of any problems with them or with the notices of hearing given concerning them. They also keep track of parties' failures to file required papers in a timely manner and assist the court in compelling compliance with the court's rules and the laws applicable to probate matters.

A. Superior Court Clerk

The superior court clerk is usually just called the clerk, or the court clerk. The clerk's office is responsible for filing and storing all papers sent to the court by the parties to lawsuits and other matters heard in the court, and all orders made by the court's judges. In the larger counties, the clerk's office has a probate division responsible for maintaining the records of matters heard in the probate court.

The clerk keeps files that are records of each court case, including each conservatorship. All of the papers that are filed in a conservatorship are put in its case file, maintained under its file number. You must refer to that number and the case's name when you call or write the clerk's office. Any document you file must also contain the file number and the case name. The name of a conservatorship case (in which conservators of the person and estate have been appointed) is stated as "Conservatorship of the Person and Estate of [name of conservatee], Conservatee."

Each conservatorship case has both a public and a confidential file. The confidential file contains documents that have personal information about the conservatee, such as the court investigator's report. Your lawyer will advise you which documents must be filed in the confidential file. **L**

Throughout this handbook, you are advised to file various petitions, reports, and accounts with the court. This means presenting the papers to the clerk's office, where they will be placed in the conservatorship file. In most instances, your lawyer will do this for you. **L**

The clerk issues your Letters of Conservatorship and provides certified copies of them when you request and pay for them; see Chapter 1, Section 3(B). If you are a conservator of the estate, you must also file your **bond** with the court clerk's office; see Chapter 5, Section 1(B).

Court clerks are not permitted to give legal advice, to explain what papers are to be filed, or to answer questions about how to handle the conservatorship.

B. Court Investigator

Every superior court has at least one court investigator. The court investigator serves as the judge's "eyes and ears" in that the investigator is allowed to contact the conservatee or other interested people outside the courtroom. The court investigator is sometimes called the **probate investigator**.

A court investigator may have contacted you before you were appointed. In most cases, a court investigator must personally visit the proposed conservatee before the conservator is appointed. The investigator explains the conservatorship, answers questions, sees whether the proposed conservatee has any objections, and recommends whether a lawyer should be appointed to represent the proposed conservatee.

Court supervision One year after your appointment and every two years after that, the court reviews the conservatorship. This usually takes place at the time the court reviews your account and report (see Chapter 5, Section 8). At that time, a court investigator visits the conservatee and reminds the conservatee that he or she has a conservator and who the conservator is. The court investigator checks to see whether

- The conservatee wants the conservatorship to end.
- The conservatee should still be in a conservatorship.
- The conservator is acting in the conservatee's best interests.

A court investigator may contact you or anyone else to find out whether you are acting in the conservatee's best interests, so be prepared to cooperate. The court investigator will assess

- The conservatee's living situation, whether at home or in a care facility
- How much care and supervision the conservatee needs

- How well the conservatee's needs are being met
- What kinds of resources may be available to assist you

In most courts, a court investigator will review the conservator's account and report to see what level of care the conservatee can afford and whether the estate is being managed properly. The court investigator may question the conservator about transactions reported in his or her account and report.

Court investigator's report The court investigator gives the judge a confidential report of the investigation. Copies of the report must be mailed to you and your lawyer. If you have any questions about the report, ask your lawyer, or, if your lawyer recommends it, you may contact the court investigator directly. **L**

Other duties of the court investigator Although a court investigator's time is limited, he or she responds to complaints brought to the investigator's attention about how a conservatorship is being handled. The court investigator will contact the conservatee, the conservator, and others, if necessary, to check into a complaint.

In some instances, the court investigator may recommend that the judge appoint a lawyer for the conservatee. This may happen when the court investigator feels more investigation is needed, or if the conservatee wants the conservatorship to end or wants the conservator to be replaced.

The court investigator does not investigate crimes, but may refer them to the appropriate law enforcement agency.

If you are required to file a plan of conservatorship with the court (see Chapter 6), you must give the court investigator a copy. In some courts, the court investigator looks over legal papers filed with the court before a judge reads them, to make sure that they are complete. In most courts, however, that function is performed by other members of the court's probate staff. In the larger counties, the staff includes attorneys experienced in probate matters.

Cost of court investigations The cost of court investigations, called a court assessment, must be paid by the conservator from the conservatee's estate, unless the court waives the assessment because of hardship. If you believe the conservatee can't afford the assessment, have your lawyer ask the court to defer or waive payment. **L**

C. Probate Referee

At least one **probate referee** appointed by the State Controller serves each county. The court chooses a probate referee to appraise the value of noncash assets in a conservatorship (see Chapter 5, Section 6). You must give the probate referee an Inventory and Appraisal that includes all noncash assets of the conservatee. The referee figures out what the noncash assets were worth on the date you were appointed conservator. During the conservatorship, you may need to have the assets appraised by the referee again, most commonly when real estate is sold more than a year after your appointment.

2. Role of the Conservator's Lawyer

Your lawyer plays a key role by advising you over the course of the conservatorship. Your lawyer will help you prepare inventories, accounts, reports, and petitions; will file them with the court on your behalf; and will attend any required court hearings. Ask your lawyer to give you copies of all of the papers that he or she files on your behalf and all papers that he or she receives from other persons interested in the conservatorship. **L**

A close working relationship with your lawyer will make your job as conservator much easier. If you have any questions about your conservatorship responsibilities, check with your lawyer, not with court staff.

Chapter 1, Section 3(D), has more information about working with your lawyer.

3. Appointment of a Lawyer for the Conservatee

Conservatees have the right to be represented by a lawyer. For certain types of matters, the law requires that the court appoint a lawyer for the conservatee if the conservatee requests one, or if the court believes the appointment would be helpful or is necessary to protect the interests of the conservatee. In those cases, the judge will decide whether the conservatee can afford to pay the lawyer all or any portion of his or her fees and costs that have been approved by the court. If so, the lawyer's approved fees will be paid by the conservatorship estate, to the extent the court determines it has the ability to do so. Any portion of this lawyer's fees and costs the conservatee can't afford to pay are paid by the county.

The lawyer appointed by the court usually prepares and files a written report, including his or her recommendations for resolution of the matter before the court. Sometimes you may disagree with a position being taken by the conservatee's lawyer. If so, it may be possible to reach a compromise to settle the disagreement. If everyone involved can't agree to a compromise, a judge may have to decide what's best. Recommendations by court-appointed counsel for the conservatee are usually given great weight and consideration by the court.